

## SENATE BILL NO. 290

INTRODUCED BY MANGAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING CERTAIN WATER AND SANITATION INFORMATION TO BE SUBMITTED WITH A PRELIMINARY PLAT FOR LOCAL SUBDIVISION REVIEW; REQUIRING THE INFORMATION TO CONFORM WITH RULES AND STANDARDS ADOPTED AND PUBLISHED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY AND THE BOARD OF ENVIRONMENTAL REVIEW; PROHIBITING A GOVERNING BODY FROM REQUIRING ADDITIONAL WATER AND SANITATION INFORMATION UNLESS CERTAIN PROCEDURES ARE FOLLOWED; REQUIRING A GOVERNING BODY TO COLLECT PUBLIC COMMENT ON THE WATER AND SANITATION INFORMATION AND REQUIRING THE SUBDIVIDER TO FORWARD THE INFORMATION AND PUBLIC COMMENT ON PROPOSED SUBDIVISIONS TO THE APPROPRIATE REVIEWING AUTHORITY; ALLOWING A GOVERNING BODY TO CONDITION APPROVAL ON APPROVAL BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY OR ON CERTAIN WATER AND SANITATION INFORMATION BEING PROVIDED; PROHIBITING A GOVERNING BODY FROM CONDITIONALLY APPROVING OR DENYING A PROPOSED SUBDIVISION UNLESS THE DECISION IS BASED ON REGULATIONS THAT THE GOVERNING BODY IS AUTHORIZED TO ENFORCE; ALLOWING THE DEPARTMENT OF ENVIRONMENTAL QUALITY TO ADOPT RULES TO CLARIFY THE INFORMATION REQUIRED TO BE SUBMITTED; AND AMENDING SECTIONS 76-3-504, 76-3-511, 76-3-601, 76-3-604, 76-3-608, 76-4-104, AND 76-4-125, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 76-3-504, MCA, is amended to read:

**"76-3-504. Subdivision regulations -- contents.** (1) The subdivision regulations adopted under this chapter must, at a minimum:

(a) except as provided in 76-3-210, 76-3-509, or 76-3-609(3), require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;

(b) establish procedures consistent with this chapter for the submission and review of subdivision plats;

(c) prescribe the form and contents of preliminary plats and the documents to accompany final plats;

(d) provide for the identification of areas that, because of natural or human-caused hazards, are

1 unsuitable for subdivision development and prohibit subdivisions in these areas unless the hazards can be  
2 eliminated or overcome by approved construction techniques;

3 (e) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year  
4 frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;

5 (f) prescribe standards for:

6 (i) the design and arrangement of lots, streets, and roads;

7 (ii) grading and drainage;

8 (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that, ~~at a~~  
9 ~~minimum,~~ meet the:

10 (A) regulations adopted by the department of environmental quality under 76-4-104; for subdivisions that  
11 will create one or more parcels containing less than 20 acres; and

12 (B) standards provided in 76-3-604 and [section 4] for subdivisions that will create one or more parcels  
13 containing ~~between 20 and 20~~ ACRES OR MORE AND LESS THAN 160 acres; and

14 (iv) the location and installation of utilities;

15 (g) provide procedures for the administration of the park and open-space requirements of this chapter;

16 (h) provide for the review of preliminary plats by affected public utilities and those agencies of local,  
17 state, and federal government having a substantial interest in a proposed subdivision. A utility or agency review  
18 may not delay the governing body's action on the plat beyond the time limits specified in this chapter, and the  
19 failure of any agency to complete a review of a plat may not be a basis for rejection of the plat by the governing  
20 body.

21 (i) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider  
22 to:

23 (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be  
24 subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have  
25 a legal right to the water and reserve and sever any remaining surface water rights from the land;

26 (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to  
27 provide the use of a water right on the subdivision lots, establish a landowner's water use agreement  
28 administered through a single entity that specifies administration and the rights and responsibilities of  
29 landowners within the subdivision who have a legal right and access to the water; or

30 (iii) reserve and sever all surface water rights from the land;

(j) except as provided in this subsection, require the subdivider to establish ditch easements in the subdivision that are in locations of appropriate topographic characteristics and sufficient width, to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots; are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner. Establishment of easements pursuant to this subsection (1)(j) is not required if:

(i) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(ii) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(k) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(l) require the subdivider to describe, dimension, and show utility easements in the subdivision on the final plat in their true and correct location. The utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of utility facilities for the provision of utility services within the subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development."

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2           **Section 2.** Section 76-3-511, MCA, is amended to read:

3           **"76-3-511. Local regulations no more stringent than state regulations or guidelines.** (1) Except  
4 as provided in subsections (2) through (4) or unless required by state law, a governing body may not adopt a  
5 ~~rule~~ regulation under 76-3-501 or 76-3-504(1)(f)(iii) that is more stringent than the comparable state regulations  
6 or guidelines that address the same circumstances. The governing body may incorporate by reference  
7 comparable state regulations or guidelines.

8           (2) The governing body may adopt a ~~rule~~ regulation to implement 76-3-501 or 76-3-504(1)(f)(iii) that is  
9 more stringent than comparable state regulations or guidelines only if the governing body makes a written  
10 finding, after a public hearing and public comment and based on evidence in the record, that:

11           (a) the proposed local standard or requirement protects public health or the environment; and

12           (b) the local standard or requirement to be imposed can mitigate harm to the public health or  
13 environment and is achievable under current technology.

14           (3) The written finding must reference information and peer-reviewed scientific studies contained in the  
15 record that forms the basis for the governing body's conclusion. The written finding must also include information  
16 from the hearing record regarding the costs to the regulated community that are directly attributable to the  
17 proposed local standard or requirement.

18           (4) (a) A person affected by a ~~rule~~ regulation of the governing body adopted after January 1, 1990, and  
19 before April 14, 1995, that that person believes to be more stringent than comparable state regulations or  
20 guidelines may petition the governing body to review the ~~rule~~ regulation. If the governing body determines that  
21 the ~~rule~~ regulation is more stringent than comparable state regulations or guidelines, the governing body shall  
22 comply with this section by either revising the ~~rule~~ regulation to conform to the state regulations or guidelines  
23 or by making the written finding, as provided under subsection (2), within a reasonable period of time, not to  
24 exceed 12 months after receiving the petition. A petition under this section does not relieve the petitioner of the  
25 duty to comply with the challenged ~~rule~~ regulation. The governing body may charge a petition filing fee in an  
26 amount not to exceed \$250.

27           (b) A person may also petition the governing body for a ~~rule~~ regulation review under subsection (4)(a)  
28 if the governing body adopts a ~~rule~~ regulation after January 1, 1990, in an area in which no state regulations or  
29 guidelines existed and the state government subsequently establishes comparable regulations or guidelines that  
30 are less stringent than the previously adopted governing body ~~rule~~ regulation."

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2       **Section 3.** Section 76-3-601, MCA, is amended to read:

3       **"76-3-601. Submission of preliminary plat for review -- water and sanitation information required.**

4       (1) Except when a plat is eligible for summary review pursuant to 76-3-505, the subdivider shall present to the  
5 governing body or to the agent or agency designated by the governing body the preliminary plat of the proposed  
6 subdivision for local review. The preliminary plat must show all pertinent features of the proposed subdivision  
7 and all proposed improvements and must be accompanied by the preliminary water and sanitation information  
8 required under [section 4].

9       (2) (a) When the proposed subdivision lies within the boundaries of an incorporated city or town, the  
10 preliminary plat must be submitted to and approved by the city or town governing body.

11       (b) When the proposed subdivision is situated entirely in an unincorporated area, the preliminary plat  
12 must be submitted to and approved by the governing body of the county. However, if the proposed subdivision  
13 lies within 1 mile of a third-class city or town, within 2 miles of a second-class city, or within 3 miles of a first-class  
14 city, the county governing body shall submit the preliminary plat to the city or town governing body or its  
15 designated agent for review and comment. If the proposed subdivision is situated within a rural school district,  
16 as described in 20-9-615, the county governing body shall provide an informational copy of the preliminary plat  
17 to school district trustees.

18       (c) If the proposed subdivision lies partly within an incorporated city or town, the proposed plat must be  
19 submitted to and approved by both the city or town and the county governing bodies.

20       (d) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body  
21 of the municipality shall coordinate the subdivision review and annexation procedures to minimize duplication  
22 of hearings, reports, and other requirements whenever possible.

23       (3) The provisions of 76-3-604, 76-3-605, 76-3-608 through 76-3-610, and this section do not limit the  
24 authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to 7-3-4444."  
25

26       **NEW SECTION. Section 4. Water and sanitation information to accompany preliminary plat.** (1)

27 Except as provided in subsection (2), the subdivider shall submit to the governing body or to the agent or agency  
28 designated by the governing body the information listed in this section for proposed subdivisions that will include  
29 new water supply or wastewater facilities. The information must include:

30       (a) a vicinity map or plan that shows ~~the location, within 100 feet outside of the exterior property line and~~

on the proposed lots, of flood plains, surface water features, springs, irrigation ditches, previously approved and proposed wells and wastewater treatment systems, and mixing zones identified as provided in subsection (1)(h);

(i) THE LOCATION, WITHIN 100 FEET OUTSIDE OF THE EXTERIOR PROPERTY LINE OF THE SUBDIVISION AND ON THE PROPOSED LOTS, OF:

(A) FLOOD PLAINS;

(B) SURFACE WATER FEATURES;

(C) SPRINGS;

(D) IRRIGATION DITCHES;

(E) EXISTING, PREVIOUSLY APPROVED, AND, FOR PARCELS LESS THAN 20 ACRES, PROPOSED WATER WELLS AND WASTEWATER TREATMENT SYSTEMS; AND

(F) FOR PARCELS LESS THAN 20 ACRES, MIXING ZONES IDENTIFIED AS PROVIDED IN SUBSECTION (1)(G); AND

(G) FOR PARCELS 20 ACRES AND OVER, THE ANALYSIS PERFORMED THE REPRESENTATIVE DRAINFIELD SITE USED FOR THE SOIL PROFILE DESCRIPTION AS REQUIRED UNDER SUBSECTION (1)(D); AND

(ii) THE LOCATION, WITHIN 500 FEET OUTSIDE OF THE EXTERIOR PROPERTY LINE OF THE SUBDIVISION, OF PUBLIC WATER AND SEWER FACILITIES;

(b) a description of the proposed subdivision's water supply systems, storm water systems, solid waste disposal systems, and wastewater treatment systems, including whether the water supply and wastewater treatment systems are individual, shared, multiple user, or public as those systems are defined in rules published by the department of environmental quality;

(c) a drawing of the conceptual lot layout at a scale no smaller than 1 inch equal to 200 feet that shows all information required for a lot layout document in rules adopted by the department of environmental quality pursuant to 76-4-104;

(d) evidence of suitability for new onsite wastewater treatment systems that, at a minimum, includes:

(i) a soil profile description from a representative drainfield site IDENTIFIED ON THE VICINITY MAP, AS PROVIDED IN SUBSECTION (1)(A)(I)(G), that complies with standards published by the department of environmental quality;

(ii) demonstration that the soil profile contains a minimum of 4 feet of vertical separation distance between the bottom of the permeable surface of the proposed wastewater treatment system and a limiting layer; and

(iii) in cases in which the soil profile or other information indicates that ground water is within 7 feet of

1 the natural ground surface, evidence that the ground water will not exceed the minimum vertical separation  
2 distance provided in subsection (1)(d)(ii);

3 (e) for new ~~multiple user and public~~ water supply systems, UNLESS CISTERNS ARE PROPOSED, evidence  
4 of adequate water availability:

5 (i) obtained from well logs or testing of onsite or nearby wells;

6 (ii) obtained from information contained in published hydrogeological reports; or

7 (iii) as otherwise specified by rules adopted by the department of environmental quality pursuant to  
8 76-4-104;

9 ~~(f) for new individual or shared water supply systems, unless cisterns are proposed, evidence of~~  
10 ~~adequate water availability and dependability in accordance with rules adopted by the department of~~  
11 ~~environmental quality pursuant to 76-4-104;~~

12 ~~(g)(F)~~ evidence of sufficient water quality in accordance with rules adopted by the department of  
13 environmental quality pursuant to 76-4-104;

14 ~~(h)(G)~~ a preliminary analysis of potential impacts to ground water quality from new wastewater treatment  
15 systems, using as guidance rules adopted by the board of environmental review pursuant to 75-5-301 and  
16 75-5-303 related to standard mixing zones for ground water, source specific mixing zones, and nonsignificant  
17 changes in water quality. The preliminary analysis may be based on currently available information and must  
18 consider the effects of overlapping mixing zones from proposed and existing wastewater treatment systems  
19 within and directly adjacent to the subdivision. Instead of performing the preliminary analysis required under this  
20 subsection ~~(1)(h)~~ (1)(G), the subdivider may perform a complete nondegradation analysis in the same manner  
21 as is required for an application that is reviewed under Title 76, chapter 4.

22 (2) A subdivider whose land division is excluded from review under 76-4-125(2) is not required to submit  
23 the information required in this section.

24 (3) A governing body may not, through adoption of regulations, require water and sanitation information  
25 in addition to the information required under this section unless the governing body complies with the  
26 procedures provided in 76-3-511.

27  
28 **Section 5.** Section 76-3-604, MCA, is amended to read:

29 **"76-3-604. Review of preliminary plat.** (1) The governing body or its designated agent or agency shall  
30 review the preliminary plat to determine whether it conforms to the provisions of this chapter and to rules

1 prescribed or adopted pursuant to this chapter.

2 (2) The governing body shall approve, conditionally approve, or disapprove the preliminary plat within  
3 60 working days of its presentation unless the subdivider consents to an extension of the review period.

4 (3) If the governing body disapproves or conditionally approves the preliminary plat, it shall forward one  
5 copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for  
6 disapproval or enumerating the conditions that must be met to ensure approval of the final plat.

7 (4) (a) The governing body shall collect public comment SUBMITTED AT A HEARING OR HEARINGS regarding  
8 the information presented pursuant to [section 4] and shall make any comments submitted or a summary of the  
9 comments submitted available to the subdivider within 30 days after conditional approval or approval of the  
10 subdivision application and preliminary plat.

11 (b) The subdivider shall, as part of the subdivider's application for sanitation approval, forward the  
12 comments or the summary provided by the governing body to the:

13 (i) reviewing authority provided for in Title 76, chapter 4, for subdivisions that will create one or more  
14 parcels containing less than 20 acres; and

15 (ii) local health department or board of health for proposed subdivisions that will create one or more  
16 parcels containing 20 to ACRES OR MORE AND LESS THAN 160 acres.

17 (5) (a) For a proposed subdivision that will create one or more parcels containing less than 20 acres,  
18 the governing body may require approval by the department of environmental quality as a condition of approval  
19 of the final plat.

20 (b) For a proposed subdivision that will create one or more parcels containing 20 acres or more, the  
21 governing body may condition approval of the final plat upon the subdivider demonstrating, pursuant to [section  
22 4], that there is an adequate water source and at least one area for a septic system and a replacement drainfield  
23 for each lot."

24  
25 **Section 6.** Section 76-3-608, MCA, is amended to read:

26 **"76-3-608. Criteria for local government review.** (1) The basis for the governing body's decision to  
27 approve, conditionally approve, or disapprove a subdivision is whether the preliminary plat, applicable  
28 environmental assessment, public hearing, planning board recommendations, or additional information  
29 demonstrates that development of the subdivision meets the requirements of this chapter. A governing body may  
30 not deny approval of a subdivision based solely on the subdivision's impacts on educational services.

1 (2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as  
2 applicable.

3 (3) A subdivision proposal must undergo review for the following primary criteria:

4 (a) except when the governing body has established an exemption pursuant to subsection (7) of this  
5 section or except as provided in 76-3-505 and 76-3-509, the effect on agriculture, agricultural water user  
6 facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety;

7 (b) compliance with:

8 (i) the survey requirements provided for in part 4 of this chapter;

9 (ii) the local subdivision regulations provided for in part 5 of this chapter; and

10 (iii) the local subdivision review procedure provided for in this part;

11 (c) the provision of easements for the location and installation of any planned utilities; and

12 (d) the provision of legal and physical access to each parcel within the subdivision and the required  
13 notation of that access on the applicable plat and any instrument of transfer concerning the parcel.

14 (4) The governing body may require the subdivider to design the subdivision to reasonably minimize  
15 potentially significant adverse impacts identified through the review required under subsection (3). The governing  
16 body shall issue written findings to justify the reasonable mitigation required under this subsection (4).

17 (5) (a) In reviewing a subdivision under subsection (3) and when requiring mitigation under subsection  
18 (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized  
19 that in some instances the unmitigated impacts of a proposed development may be unacceptable and will  
20 preclude approval of the plat.

21 (b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider  
22 and shall give due weight and consideration to the expressed preference of the subdivider.

23 (6) (a) When a minor subdivision is proposed in an area where a growth policy has been adopted  
24 pursuant to chapter 1 and the proposed subdivision will comply with the growth policy, the subdivision is exempt  
25 from the review criteria contained in subsection (3)(a) but is subject to applicable zoning regulations.

26 (b) In order for a growth policy to serve as the basis for the exemption provided by this subsection (6),  
27 the growth policy must meet the requirements of 76-1-601.

28 (7) The governing body may exempt subdivisions that are entirely within the boundaries of designated  
29 geographic areas from the review criteria in subsection (3)(a) if all of the following requirements have been met:

30 (a) the governing body has adopted a growth policy pursuant to chapter 1 that:

- 1 (i) addresses the criteria in subsection (3)(a);  
2 (ii) evaluates the effect of subdivision on the criteria in subsection (3)(a);  
3 (iii) describes zoning regulations that will be implemented to address the criteria in subsection (3)(a);  
4 and  
5 (iv) identifies one or more geographic areas where the governing body intends to authorize an  
6 exemption from review of the criteria in subsection (3)(a); and  
7 (b) the governing body has adopted zoning regulations pursuant to chapter 2, part 2 or 3, that:  
8 (i) apply to the entire area subject to the exemption; and  
9 (ii) address the criteria in subsection (3)(a), as described in the growth policy.  
10 (8) A governing body may conditionally approve or deny a proposed subdivision as a result of the water  
11 and sanitation information provided pursuant to [section 4] or public comment received pursuant to 76-3-604 on  
12 the information provided pursuant to [section 4] only if the conditional approval or denial is based on existing  
13 subdivision, zoning, or other regulations that the governing body has the authority to enforce."  
14

15 **Section 7.** Section 76-4-104, MCA, is amended to read:

16 **"76-4-104. Rules for administration and enforcement.** (1) The department shall, subject to the  
17 provisions of 76-4-135, adopt reasonable rules, including adoption of sanitary standards, necessary for  
18 administration and enforcement of this part.

19 (2) The rules and standards must provide the basis for approving subdivisions for various types of public  
20 and private water supplies, sewage disposal facilities, storm water drainage ways, and solid waste disposal. The  
21 rules and standards must be related to:

- 22 (a) size of lots;  
23 (b) contour of land;  
24 (c) porosity of soil;  
25 (d) ground water level;  
26 (e) distance from lakes, streams, and wells;  
27 (f) type and construction of private water and sewage facilities; and  
28 (g) other factors affecting public health and the quality of water for uses relating to agriculture, industry,  
29 recreation, and wildlife.

30 (3) (a) Except as provided in subsection (3)(b), the rules must provide for the review of subdivisions by

1 a local department or board of health, as described in Title 50, chapter 2, part 1, if the local department or board  
2 of health employs a registered sanitarian or a registered professional engineer and if the department certifies  
3 under subsection (4) that the local department or board is competent to conduct the review.

4 (b) (i) Except as provided in 75-6-121 and subsection (3)(b)(ii) of this section, a local department or  
5 board of health may not review public water supply systems, public sewage systems, or extensions of or  
6 connections to these systems.

7 (ii) A local department or board of health may be certified to review subdivisions proposed to connect  
8 to existing municipal water and wastewater systems previously approved by the department if no extension of  
9 the systems is required.

10 (4) The department shall also adopt standards and procedures for certification and maintaining  
11 certification to ensure that a local department or board of health is competent to review the subdivisions as  
12 described in subsection (3).

13 (5) The department shall review those subdivisions described in subsection (3) if:

14 (a) a proposed subdivision lies within more than one jurisdictional area and the respective governing  
15 bodies are in disagreement concerning approval of or conditions to be imposed on the proposed subdivision;  
16 or

17 (b) the local department or board of health elects not to be certified.

18 (6) The rules must further provide for:

19 (a) providing the reviewing authority with a copy of the plat or certificate of survey subject to review  
20 under this part and other documentation showing the layout or plan of development, including:

21 (i) total development area; and

22 (ii) total number of proposed dwelling units and structures requiring facilities for water supply or sewage  
23 disposal;

24 (b) adequate evidence that a water supply that is sufficient in terms of quality, quantity, and  
25 dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

26 (c) evidence concerning the potability of the proposed water supply for the subdivision;

27 (d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

28 (e) standards and technical procedures applicable to storm drainage plans and related designs, in order  
29 to ensure proper drainage ways;

30 (f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil

1 testing and site design standards for on-lot sewage disposal systems when applicable;

2 (g) standards and technical procedures applicable to water systems;

3 (h) standards and technical procedures applicable to solid waste disposal;

4 (i) criteria for granting waivers and deviations from the standards and technical procedures adopted  
5 under subsections (6)(e) through (6)(h);

6 (j) evidence to establish that, if a public water supply system or a public sewage system is proposed,  
7 provision has been made for the system and, if other methods of water supply or sewage disposal are proposed,  
8 evidence that the systems will comply with state and local laws and regulations that are in effect at the time of  
9 submission of the preliminary or final plan or plat; and

10 (k) evidence to demonstrate that appropriate easements, covenants, agreements, and management  
11 entities have been established to ensure the protection of human health and state waters and to ensure the  
12 long-term operation and maintenance of water supply, storm water drainage, and sewage disposal facilities.

13 (7) If the reviewing authority is a local department or board of health, it shall notify the department of  
14 its recommendation for approval or disapproval of the subdivision not later than 50 days from its receipt of the  
15 subdivision application. The department shall make a final decision on the subdivision within 10 days after  
16 receiving the recommendation of the local reviewing authority, but not later than 60 days after the submission  
17 of a complete application, as provided in 76-4-125.

18 (8) Review and certification or denial of certification that a division of land is not subject to sanitary  
19 restrictions under this part may occur only under those rules in effect when a complete application is submitted  
20 to the reviewing authority, except that in cases in which current rules would preclude the use for which the lot  
21 was originally intended, the applicable requirements in effect at the time the lot was recorded must be applied.  
22 In the absence of specific requirements, minimum standards necessary to protect public health and water quality  
23 apply.

24 (9) The reviewing authority may not deny or condition a certificate of subdivision approval under this  
25 part unless it provides a written statement to the applicant detailing the circumstances of the denial or condition  
26 imposition. The statement must include:

27 (a) the reason for the denial or condition imposition;

28 (b) the evidence that justifies the denial or condition imposition; and

29 (c) information regarding the appeal process for the denial or condition imposition.

30 (10) The department may adopt rules that provide technical details and clarification regarding the water

1 and sanitation information required to be submitted under [section 4]."

2  
3 **Section 8.** Section 76-4-125, MCA, is amended to read:

4 **"76-4-125. Review of subdivision application -- land divisions excluded from review.** (1) Except  
5 as provided in subsection (2), an application for review of a subdivision must be submitted to the reviewing  
6 authority. The review by the reviewing authority must be as follows:

7 (a) At any time after the developer has submitted an application under the Montana Subdivision and  
8 Platting Act, the developer shall present a subdivision application to the reviewing authority. The application must  
9 include preliminary plans and specifications for the proposed development, whatever information the developer  
10 feels necessary for its subsequent review, any public comments or summaries of public comments collected as  
11 provided in 76-3-604(4), and information required by the reviewing authority. Subdivision fees assessed by the  
12 reviewing authority must accompany the application. If the proposed development includes onsite sewage  
13 disposal facilities, the developer shall notify the designated agent of the local board of health prior to presenting  
14 the subdivision application to the reviewing authority. The agent may conduct a preliminary site assessment to  
15 determine whether the site meets applicable state and local requirements.

16 (b) Except as provided in 75-1-208(4)(b), the department shall make a final decision on the proposed  
17 subdivision within 60 days after the submission of a complete application and payment of fees to the reviewing  
18 authority unless an environmental impact statement is required, at which time this deadline may be increased  
19 to 120 days. The reviewing authority may not request additional information for the purpose of extending the time  
20 allowed for a review and final decision on the proposed subdivision. If the department approves the subdivision,  
21 the department shall issue a certificate of subdivision approval indicating that it has approved the plans and  
22 specifications and that the subdivision is not subject to a sanitary restriction.

23 (2) A subdivision excluded from the provisions of chapter 3 must be submitted for review according to  
24 the provisions of this part, except that the following divisions or parcels, unless the exclusions are used to evade  
25 the provisions of this part, are not subject to review:

26 (a) the exclusions cited in 76-3-201 and 76-3-204;

27 (b) divisions made for the purpose of acquiring additional land to become part of an approved parcel,  
28 provided that water or sewage disposal facilities may not be constructed on the additional acquired parcel and  
29 that the division does not fall within a previously platted or approved subdivision;

30 (c) divisions made for purposes other than the construction of water supply or sewage and solid waste

1 disposal facilities as the department specifies by rule;

2 (d) divisions located within jurisdictional areas that have adopted growth policies pursuant to chapter  
3 1 or within first-class or second-class municipalities for which the governing body certifies, pursuant to 76-4-127,  
4 that adequate storm water drainage and adequate municipal facilities will be provided; and

5 (e) subject to the provisions of subsection (3), a remainder of an original tract created by segregating  
6 a parcel from the tract for purposes of transfer if:

7 (i) the remainder is served by a public or multiple-user sewage system approved before January 1,  
8 1997, pursuant to local regulations or this chapter; or

9 (ii) the remainder is 1 acre or larger and has an individual sewage system that was constructed prior to  
10 April 29, 1993, and, if required when installed, was approved pursuant to local regulations or this chapter.

11 (3) Consistent with the applicable provisions of 50-2-116(1)(i), a local health officer may require that,  
12 prior to the filing of a plat or a certificate of survey subject to review under this part for the parcel to be  
13 segregated from the remainder referenced in subsection (2)(e)(ii), the remainder include acreage or features  
14 sufficient to accommodate a replacement drainfield."  
15

16 NEW SECTION. **Section 9. Codification instruction.** [Section 4] is intended to be codified as an  
17 integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 4].  
18

- END -